# Valley Septober AC

# Overview

French author Voltaire argued, “The best is the enemy of the good.” While Confucius seconded, “Better a diamond with a flaw than a pebble without.” And it is because we prefer a world of imperfect justice to a world without justice that I affirm the resolution, resolved: In the United States criminal justice system, plea bargaining is just.

# Definitions and Observations

First, I offer one definition:

## Plea Bargaining is a Consensual and Mutually Beneficial Act

**Black Law '20 (**"Plea Bargaining." The Law Dictionary Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed., TheLawDictionary.org, https://thelawdictionary.org/plea-bargaining/. Accessed 30 Aug. 2025.)

[Plea Bargaining is] An agreement set up between the plaintiff and the defendant to come to a resolution about a case, without ever taking it to trial

Second, I offer one observation

## Plea Bargaining's Prevalence Ordains MAXIMUM Weight for Impacts

**Devers**, L. & CSR, Incorporated. (20**11**). Plea and charge bargaining Research summary. In *CSR, Incorporated* [Research summary]. https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/pleabargainingresearchsummary.pdf

According to the Bureau of Justice Statistics (2005), in 2003 there were 75,573 cases disposed of in federal district court by trial or plea. Of these, about 95 percent were disposed of by a guilty plea (Pastore and Maguire, 2003). While there are no exact estimates of the proportion of cases that are resolved through plea bargaining, scholars estimate that about 90 to 95 percent of both federal and state court cases are resolved through this process (Bureau of Justice Statistics, 2005; Flanagan and Maguire, 1990).

# Framework

**As implied by the resolution, I value**

## Justice, Defined

*John Rawls (**Stanford Encyclopedia of Philosophy**)*. (20**21**, April 12).
https://plato.stanford.edu/entries/rawls

John Rawls (b. 1921, d. 2002) was an American political philosopher in the liberal tradition. His theory of *justice* **as fairness** describes a society of free citizens holding equal basic rights and cooperating within an egalitarian economic system. His theory of *political liberalism* explores the legitimate use of political power in a democracy, and envisions how civic unity might endure despite the diversity of worldviews that free institutions allow. His writings on *the law of peoples* set out a liberal foreign policy that aims to create a permanently peaceful and tolerant international order.

## My Value Criterion is Utilitarianism

*The History of Utilitarianism (**Stanford Encyclopedia of Philosophy**)*. (20**25**, July 31).
https://plato.stanford.edu/entries/utilitarianism-history

Utilitarianism is one of the most powerful and persuasive approaches to normative ethics in the history of philosophy. The approach is a species of consequentialism, which holds that the moral quality of an action or policy is *entirely* a function of its consequences, or the value *produced* by the action or policy. This approach is contrasted with other approaches to moral evaluation which either entirely eschew a consideration of consequences or view an action's production of value as simply one element amongst others grounding its moral quality.

# Contention I: Systemic Injustice

In a world without plea bargains, the United States' systems and mechanisms would fall apart, three points

Subpoint A: Court Clog

### Judge Opinion Stands With Bargains

**Cohen**, Ed. (20**21**, July 13). *Judges overwhelmingly approve of plea bargaining, largely for practical reasons - The National Judicial College*. https://www.judges.org/news-and-info/judges-overwhelmingly-approve-of-plea-bargaining-largely-for-practical-reasons (Ed Cohen, MA in Journalism, Congressional Candidate, Political Campaigner and Organizer, "Award-Winning Writer")

Do most judges think plea bargains advance justice? Yes, but it's complicated. Nearly 90 percent of the 552 judges who voted in [a] our one-question survey of NJC alumni earlier this month said plea bargains, which some prefer to call plea agreements, do advance justice. But judging from the comments, which nearly half of the respondents left, most see this as a moot question. More than 95 percent of criminal cases today end in plea agreements. If all or even a significantly larger percentage of cases went to trial, the system would be overwhelmed. "You have any idea how many counties would go bankrupt if (they were) required to try every case filed???" asked one judge anonymously, as was usually the case with the comments. "Without them," wrote another, "we would have a docket dating back to the 1800s." Circuit and Drug Court Judge John H. Graham of Alabama's 38th Judicial Circuit said plea bargains "absolutely" advance justice. "The guilty know they're guilty and negotiate the best possible solution to the problem. It saves taxpayer money, saves court, juror and lawyer time and money, reduces stress on victims, and brings speedy conclusions to cases, thereby reducing backlogs." Another judge appreciated that plea bargains prevent "revictimization" of people who have suffered sexual assault or other violent crimes. A guilty plea means they don't have to appear in court and describe what happened to them. "I have seen countless children under the age of 10 have to describe unimaginable crimes," wrote the judge.

Premier experts of the criminal justice system argue unanimously that overload is inevitable without plea bargaining, and,

### A Chance is Enough—Courts That Think They're at Risk of Overload Preemptively Drop Cases

**Shapiro**, M. A. (20**21**). *Distributing civil justice*. *Georgetown Law Journal*. https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2021/08/Shapiro_Distributing-Civil-Justice.pdf (Shapiro, Ph.D., Chief Economist and Head of Economic Research at Alpha Bank Group, Professor of Banking, Finance, and Risk Management at the University of Piraeus)

Proponents of access to justice advocate more egalitarian distributions not only of party resources, but also of judicial resources. By "judicial resources" I mean judicial personnel (judges, court staff, and jurors), the time and attention of those personnel,60 and the financial and other wherewithal of courts, as well as the ways in which procedural rules and doctrines allocate those other resources.61 The basic demand of access to justice with respect to judicial resources is that they be distributed more or less equally across different categories of cases and different groups of litigants. Conversely, access to justice is undermined when a larger [<<Page Emitted>>] the practice's costs for managed cases, particularly the risk that judges will abuse their power to prematurely terminate potentially meritorious lawsuits.66 But managerial judging might also have more systemic implications for the distribution of judicial resources. In particular, insofar as more complex cases require more case management, judges who adopt a more

managerial posture will end up spending more time and attention on complex cases than they otherwise would, necessarily reducing the time and attention they have to spend on more routine cases.67 The prevalence of managerial judging can thereby end up slighting routine cases. Once again, from an access-to-justice perspective, the worry is that courts are giving certain categories of cases short shrift so that they can focus on the ones that, from many judges' perspectives, really matter

Court clog is a consequence of the neg world, when cases are needed to be dropped to sustain a system, justice becomes conditional, those most in need of justice altogether lose access to it, weigh this as a salient consequence

Consider the cascading consequences, with subpoint B:

## The Neg World's Backlog Requires Increased Pretrial Detention

**Hernandez '24 (**Hernández, Amanda, criminal news reporter from ABC News, USA Today, and NBC4 Washington. "Shortage of Prosecutors, Judges Leads to Widespread Court Backlogs." *Stateline*, 25 Jan. 2024, part of States Newsroom. *Stateline*, https://stateline.org/2024/01/25/shortage-of-prosecutors-judges-leads-to-widespread-court-backlogs/#:~:text=The%20backlog%20poses%20significant%20challenges,jobs%20and%20experience%20housing%20instability)

The backlog poses significant challenges for defendants, whose right to a speedy trial can be jeopardized by extended pretrial detention. Those held in jail during pretrial detention may lose jobs and experience housing instability

## Now Consider Those Most Prejudiced by Pretrial Detention

**Sawyer '19** (Wang, Leah. "How Race Impacts Who Is Detained Pretrial." *Prison Policy Initiative*, 9 Oct. 2019, https://www.prisonpolicy.org/blog/2019/10/09/pretrial_race/#:~:text=research%20suggests%20that:-,In%20large%20urban%20areas%2C%20Black%20felony%20defendants%20are%20over%2025,be%20able%20to%20afford%20it)

To assess the state of racial justice in pretrial detention since the last national survey was conducted nearly 20 years ago, I reviewed more recent academic literature – studies that utilize other data sources and offer more nuanced analysis. Overall, the available research suggests that: In large urban areas, Black felony defendants are over 25% more likely than white defendants to be held pretrial. Across the country, Black and brown defendants are at least 10-25% more likely than white defendants to be detained pretrial or to have to pay money bail. Young Black men are about 50% more likely to be detained pretrial than white defendants. Black and brown defendants receive bail amounts that are twice as high as bail set for white defendants – and they are less likely to be able to afford it. Even in states that have implemented pretrial reforms, racial disparities persist in pretrial detention.

Besides delaying justice and exacerbating injustice in the "justice" system, there is also, subpoint C:

## Plea Bargaining Damages the United States' International Credibility

**Paolini**, A. (20**23**). *Global plea bargaining: A comparative analysis of 174 legal systems*. ILE Working Papers.

**Brook**, C. A. (20**16**). *The global spread of plea bargaining: Common patterns and legal translations*. *William & Mary Law Review*.

Over the last three decades, plea bargaining procedures have been adopted by a large number of jurisdictions worldwide. However, a comprehensive account of the current adoption and use of such procedures is still missing. We survey 174 jurisdictions, finding that 101 of them have a formalized plea-bargaining procedure. For 52 jurisdictions, we also compute a plea-bargaining rate, defined as the percentage of convictions imposed through plea bargaining over all criminal convictions imposed. By employing our novel dataset, we find that both a relative majority of Muslims in the population and the French and Scandinavian legal origins are associated with lower probabilities of formalizing plea bargaining. Regarding its use in practice, an increase in GDP per capita is associated with greater plea-bargaining rates up to a certain point, after which the relationship becomes negative. The Spanish and Socialist legal origins, a looser regulation of plea bargaining, and the presence of jury trials are all associated with higher plea-bargaining rates.

In a world where the vast majority of criminal cases are resolved through some means other than the popularly depicted criminal trial, it is fundamental to a comprehensive understanding of comparative criminal procedure to study and appreciate the different mechanisms for criminal case resolution in different nations. This Article developed through a series of conversations (and ultimately a panel discussion) between six international criminal justice professionals - practicing attorneys, scholars, and judges - regarding the nature and effects of plea bargaining (and its comparative substitutes) in their respective countries. Providing a comparative look at different mechanisms for criminal case resolution, this Article examines the applicable practices and procedures in the common law nations of Australia, Canada, England, New Zealand, and the United States.

(paraphrase ↓)

A. Out of 174 analyzed countries, 101 jurisdictions allow for plea bargaining in a comparable degree and structure to the USA
B. Of countries with comparable socioeconomic and political conditions to the United States, almost all have adopted the plea bargain

## Getting Rid of Plea Bargaining Disrupts Diplomacy

**Lake**, D. A. (20**09**). Hierarchy in international relations. Cornell University Press. https://www.cornellpress.cornell.edu/book/9780801477157/hierarchy-in-international-relations/
When a state deviates from the policy norms of its allies, it risks undermining trust, reducing cooperation, and weakening the credibility of its commitments. Such divergence can produce backlash and constrain the state's ability to achieve multilateral objectives.

Once again consider prejudice in the context of, subpoint D:

## In-Trial Discrimination

**Hartsoe**, S. (20**12**, April 17). *Study: All-white jury pools convict Black defendants 16 percent more often than whites*. *Duke Today*. Retrieved September 6, 2025, from https://today.duke.edu/2012/04/jurystudy

Among the key findings:-- In cases with no blacks in the jury pool, blacks were convicted 81 percent of the time, and whites were convicted 66 percent of the time. The estimated difference in conviction rates

rises to 16 percent when the authors controlled for the age and gender of the jury and the year and county in which the trial took place.

## Plea Bargains Provide Necessary Means of Evading Unjust Convictions

**Harawa**, D. (20**21**, September 21). *Trials Without Justice*. In *Inquest*. Retrieved September 6, 2025, from https://inquest.org/trials-without-justice/

Hessick's portrayal of a plea system that's out of control is compelling. The solution that Hessick identifies — more trials — is important, but also raises additional questions and concerns that should not be ignored. As Hessick explains, the problems with plea bargaining cut across racial lines, yet Black and Brown defendants have another question they must consider before standing on their trial rights — a question that white defendants can usually breeze past: How will their race affect trial? Hessick acknowledges early on that because the book is "about the criminal justice system, it is inevitably a book about race." And as she shows, you cannot consider why someone may accept a guilty plea without thinking about why they would not risk trial. But there is an uncomfortable truth underlying the book: Black and Brown defendants many plead guilty because they think (or know) that they will not get a fair trial *because* of their race. Just as the other coercion points that Hessick describes may push a defendant to plead guilty, so too may a defendant's race. The decision to go to trial can look very different for Black and Brown people than it does for white people.

IF WE REMOVE PLEA BARGAINS FROM BEING A TOOL IN THE TOOLBOX, WE DENY MINORITIES THE AUTONOMY TO OPT OUT OF A SYSTEM PREDICATED ON RACIST OPPRESSION

# Contention II: Civil Injustice

Plea bargaining provides justice to individuals, and its loss is a disservice to the public, two points

Subpoint A:

## Plea Bargains Enable Proportionality in Punishment

**Alschuler**, A. W. (19**68**). The prosecutor's role in plea bargaining. University of Chicago Law Review, 36(1), 50–112.¶

In many respects, plea negotiations have emerged not merely as a pragmatic response to docket pressure, but as a mechanism that allows for a more calibrated and individualized approach to sentencing. While critics lament the departure from adversarial adjudication, they overlook the capacity of negotiation to reflect nuances that rigid sentencing guidelines and formal trials cannot accommodate. Plea negotiations provide an opportunity to tailor sentences more closely to the culpability of the offender and the circumstances of the offense. Without this flexibility, mandatory sentencing or rigid trial outcomes may impose disproportionately severe penalties. This process, though informal, thus preserves a measure of moral judgment that would otherwise be suppressed beneath mechanical application of statutory minima. By involving both prosecutors and defense counsel in this dialogic assessment, plea bargaining may serve a corrective function against the excessive uniformity and harshness that formalism engenders

## Proportional Sentencing is a Salient Benefit for Involved Parties

**State Appellate Defender Office**. (20**21**, July 9). *Comment on proposed amendments to MCR 6.302 and MCR 6.610 (ADM File No. 2018-29)*. Michigan Supreme Court. https://www.courts.michigan.gov/4a569c/contentassets/0bfa5a1e17f441c59ed928da0b1f0047/approved/2018-29_2021-07-09_commentfromsado.pdf

The public is aware that this is how our current system operates. Allowing for equitable pleas is one small way that the parties can create a more individualized solution to a particular person's situation. Equitable pleas support individualized, proportionate sentencing. Equitable plea bargains do not prevent the accurate scoring of the sentencing guidelines. If a person pleads guilty to an offense charged, the person still must make a factual basis to enter the plea

Subpoint B: Insofar as plea bargains respect defendant autonomy, plea bargaining is just

## Placing choices In the Defendant's Hand

**Bibas '04** (Bibas, Stephanos, international scholar of criminal procedure and sentencing, circuit judge of the third appeals. "*Plea Bargaining Outside the Shadow of Trial.*" *Harvard Law Review*, vol. 117, no. 8, 2004, pp. 2463–2547. University of Pennsylvania Carey Law School Faculty Scholarship. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1923&context=faculty_scholarship)

Plea bargaining enhances the defendant's autonomy by allowing them to make informed choices about their case, including whether to admit guilt, accept responsibility, and secure more favorable outcomes. In this view, the process honors their status as agents capable of rational self-governance. Unlike a trial, which is adversarial and leaves the ultimate decision in the hands of strangers on a jury, plea bargaining entrusts the defendant with a meaningful role in shaping his own destiny. By choosing to plead guilty, a

defendant can minimize risk, accept a sentence that he finds preferable, and demonstrate contrition on his own terms. Thus, far from coercing defendants, negotiated pleas can affirm the core liberal value of respecting individuals as moral actors who must live with the consequences of their decisions.

The consequence of getting rid of plea bargaining is getting rid of the individual's right to pave their pathway to reformation. By getting rid of the ability to plea guilty for concessions, they reduce autonomy, a negative consequence of the negative side

# Burdens (should time permit)

**First, plea bargaining does not exist in a vacuum. It cannot be blamed for all systemic issues of the justice system and must be compared to practical alternatives. William and Mary Law School Professor Jeffrey Bellin describes in 2023:**

[Jeffrey Bellin is a professor at William & Mary Law School and author of Mass Incarceration Nation: How the United States Became Addicted to Prisons and Jails and How It Can Recover (Cambridge University Press, 2023). Carissa Byrne Hessick, Jeffrey Bellin, Elana Fogel, Anjelica Hendricks, Erin Blondel and John Flynn. Vol. 107 No. 1 (2023) "Plea Bargains: Efficient or Unjust?". Judicature. https://judicature.duke.edu/articles/plea-bargains-efficient-or-unjust/. DOA: August 12, 2025]

BELLIN: This is a big question since there's so much variation. But one insight I might add is that the questions, "Is plea bargaining good or bad?" and "How well is it working?" are the wrong questions. The real question is "compared to what?" You could say, "Well, plea bargaining is really awful." And I think a lot of people would agree with that. Nobody really endorses plea bargaining as a way to resolve criminal cases, but, in a lot of scenarios, it's better than going to trial, even from the defendant's perspective. I have a new book about mass incarceration [Mass Incarceration Nation: How the United States Became Addicted to Prisons and Jails and How It Can Recover] that illustrates that there are a lot of problems with the system. Plea bargaining often reflects those problems, and reacts to them, but that doesn't mean it causes them.

My opponent cannot claim Justice from a point of no comparison, they must provide solvency for the consequences they attain

**Further, the resolution is in the context of these current issues. Thus, the negative may not advocate a utopian world where these issues simply disappear. President of the National District Attorneys Association John Flynn writes in 2023:**

[John Flynn is president of the National District Attorneys Association and current D.A. of Erie County, N.Y. Carissa Byrne Hessick, Jeffrey Bellin, Elana Fogel, Anjelica Hendricks, Erin Blondel and John Flynn. Vol. 107 No. 1 (2023) "Plea Bargains: Efficient or Unjust?". Judicature. https://judicature.duke.edu/articles/plea-bargains-efficient-or-unjust/. DOA: August 12, 2025]

FLYNN: I think that there is a definite fairness problem with the disparity here. There's no doubt about that. But again, I go back to my earlier point: Where it's a necessity or an efficiency, it's a reality here. If there was no incentive for a defendant to plea down and take the offer, the system would literally shut down to a certain extent. Now, again, that doesn't make it right in a perfect world, but, unfortunately, we don't live in a perfect world. Erin mentioned that if we want to hire more police, prosecutors, judges, and public defenders, we may be able to get to that perfect world where everything goes to trial or goes to a final disposition of some sort. But that's not where we are now.